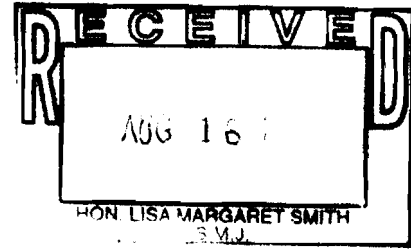


August 10, 2010

BY US MAIL

United States District Court
Southern District of New York
Hon. Lisa Margaret Smith
United States Magistrate Judge
300 Quarropas Street
White Plains, New York 10601



R.E. United States v. Donald Roth, et al.
2002-CR-1503(7) (SCR) (LMS)

Donald Roth v. United States
2009-CIV-8712 (SCR) (LMS)

Dear Judge Smith,

I write in regard to the above-entitled actions in which I am the petitioner-defendant, proceeding pro se, In Forma Pauperis and incarcerated within the Federal Bureau of Prisons.

I respectfully request that the Court set a short briefing schedule and hold a hearing via videoconference to decide the previously filed motions for release pending disposition of the pending motion under §2255. The previously filed motions for release are docketed under (#222 for 2002CR1503) and (#10 for 2009CIV8712) and were filed on December 11, 2009 and March 8, 2010 respectively.

As this Court is aware, Judge Robinson resigned from the federal bench, effective August 13, 2010 and it will be "some time" until this case is reassigned to a new district judge. (See Annexed letter from U.S. Dist. Ct. Clerk dated August 5, 2010). I am advised that Chief Judge Loretta Preska memo-endorsed a letter, yesterday, I submitted to her Chambers last week, holding that she while she cannot direct any member of the Court to act, and that the reassignment of Judge Robinson's cases will occur in "due course", Your Honor is still assigned to my case.

The government has refused to take a position on my motions for release and in fact stated in a December 2009 letter-application to Your Honor that it takes "no position" on any of my motions other than the §2255 motion, and then requested its first extension in this matter, which was granted without opportunity for me to submit opposition papers.

With the passage of time in this matter, and because I am in federal prison, it is likely that I will be released when this matter is concluded. (See Annexed letter to Chief Judge Preska dated July 28, 2010). Your Honor granted the government's second request for a sixty-day extension July 28, 2010, again with no opportunity provided to me in which to file opposition papers.

Deemed letter in 99 Civ 8712 was motion. Motion denied. Decided to deny + defect #222 in 02 CR 1503

will be addressed shortly. No hearing is needed. SO DECIDED. Lisa Margaret Smith. USMJ. 8/20/10

I respectfully submit that my \$2255 motion, memorandum of law in support thereof, this Court's prior Rule 33 decision of June 2008, and recent events in the community present a substantial question which if resolved my way, would result in a new trial or me spending as much time in prison as the length of the \$2255 process. Charle's "Flip" Melvin's credibility, perjurious testimony at my trial and the governments actions in this matter were the linchpin in this jury finding me guilty of the one-count indictment. Even Judge Robinson held in his Rule 33 decision that Flip "undeniably provided facts that could have persuaded the jury of their guilt.... cooberating audio recordings and phone records...and perhaps strengthened--the case established by other witesses." Orange County Senior Assistant District Attorney David Byrne, who testified at my trial, is now, amazingly, trying to use Flip's testimony in this matter against him in an ongoing State of New York murder trial in Orange County, New York stating that "There's a clear pattern and clear intent by the defendant to tamper with witnesses," and intending to use some of Flip's testimony in this case against him in the murder trial. (See Annexed Orange County Times Herald Record article dated July 8, 2010). I addressed the safety and flight prongs of 18 U.S.C. §3143 in my prior letters, submissions and other filings with this Court. I believe that a short-briefing schedule which permits holding a hearing by videoconference (AEDPA provisions) by or before September 10, 2010 is justified based on the foregoing.

I respectfully submit to the Court that forcing me to file for a writ of mandamus, pursuant to 28 U.S.C. §1651 and FrAP 21 because I now have nowhere else to turn to for relief and will be damaged in such in a way not correctable on appeal, should an adverse--decison be rendered, is both contrary to law in this Circuit and the facts of this case. Furthermore, I am left with no district judge to object to under 28 U.S.C. 636(a) should I disagree with any of Your Honor's rulings.

Please memo-endorse this letter with the Court's ruling and mail me a copy (I never received copies of the Court's July 28, 2010 memo-endorsed ruling).

Thank you for your consideration.

Respectfully,

By: 

FCI Sandstone
Donald Roth, 83933-054 K1
POB 1000
Sandstone, MN 55072

encl.

cc. Benjamin Allee
Assistant United States Attorney